



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/166002

PRELIMINARY RECITALS

Pursuant to a petition filed May 12, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a telephonic hearing was held on June 03, 2015, at Milwaukee, Wisconsin.

The petitioner is a 44 year old woman who represented herself at the hearing. Petitioner's mother and PCW worker, [REDACTED] [REDACTED], also appeared at the hearing. During that hearing, petitioner requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals (DHA), and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by [REDACTED].

This Administrative Law Judge (ALJ) sent a July 14, 2015 cover letter to [REDACTED] at the Office of the Inspector General (OIG) with a copy of physician letters and Aurora Health Care clinic records regarding petitioner's medical conditions. In that letter, this ALJ requested that [REDACTED] review the enclosed documents, and submit a reconsideration summary to me responding to the medical letters and clinic records to DHA by July 29, 2015 with a copy of that reconsideration summary letter to be sent to the petitioner. The petitioner requested and was granted until August 10, 2015 to submit to DHA a written response to [REDACTED]'s reconsideration summary.

[REDACTED] timely submitted a detailed July 22, 2015 reconsideration summary to DHA and to petitioner confirming that OIG correctly denied petitioner's PA request for PCW services. The petitioner failed to submit any response to the reconsideration summary to DHA by the August 10, 2015 deadline or even by the date of this decision.

The issue for determination is whether the Department correctly denied the petitioner's April, 2015 prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], nurse consultant
Office of the Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:
Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a 44 year old resident of Milwaukee County who is certified as eligible for MA. The petitioner resides with her family and does not regularly attend scheduled activities outside of her residence.
2. The petitioner is 5 feet, 11 inches tall and weighs about 234 pounds.
3. The petitioner is diagnosed with Thrombotic Microangiopathy (TTP), Arthropathy, carpal tunnel syndrome, anxiety disorder and depressive disorder. She is able to communicate her needs verbally. She does not have any hearing or visual impairments.
4. The petitioner uses durable the medical equipment of a walker, cane, shower chair, and elevated toilet seat.
5. The petitioner has not established with any medical documentation that she has any significant deficits which physically interfere with her ability to complete her ADLs other than general chronic pain. Petitioner has basically normal range of motion and normal extremities.
6. On or about March 28, 2015, Quality Assurance Home Health completed petitioner's Personal Care Screening Tool (PCST) which alleged that petitioner needed 25 hours of PCW services per week.
7. On or about April 3, 2015, the petitioner's fee-for-service provider, Quality Assurance Home Health, requested prior authorization (PA) for MA coverage of personal care worker (PCW) 24.5 hours plus 7 hours per week of PCW travel time for 53 weeks at a total requested cost of \$52,444.50. See Exhibit 2.
8. The petitioner has not requested any additional Durable Medical Equipment (DME) which could be used as an assistive device instead of a PCW to help perform ADLS such as a long handled scrub brush, long handled shoe horns, dressing sticks and sock/stocking aids.
9. OIG sent a notice to the petitioner denying her PA request for PCW services due to the petitioner's PA request and reliable medical evidence did not support the medical necessity of personal care worker (PCW) services for the petitioner.
10. During the June 3, 2015 hearing, petitioner requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by [REDACTED]. See Preliminary Recitals above.

11. The letters from petitioner's physicians, Dr. Wichman and Dr. Doermann did not establish the medical necessity for personal care worker hours, but confirmed that petitioner had medical and surgical procedures on her hip in 2013, carpal tunnel surgery in 2014, and right foot surgery in early 2015. Those letters did not address any activities of daily living (ADLs) to establish petitioner had a medical need for a PCW rather than a variety of other options to manage her symptoms and promote her independence (including DME equipment). At this time, Dr. Doermann reports only that petitioner has some ongoing complaints of tingling in her fingers following her carpal tunnel release and further testing is needed.
12. In her July 22, 2015 reconsideration summary, OIG consultant [REDACTED] established valid reasons for why the petitioner's PCW PA request was denied: a) the documentation submitted by petitioner did not establish the medical necessity for personal care worker services to complete her ADLs; b) no information in the letters by Dr. Wichman or Dr. Doermann established that petitioner's past surgeries established any significant impairment which affects petitioner's ability to perform her ADLs; c) petitioner's recent Physical Medicine and Rehabilitation note documents that petitioner is basically independent in her current functional status in relation to her ADLs without utilizing assistive devices; d) petitioner's physical exam is within normal limits and documents that petitioner's coordination is intact and her gait is normal; e) medication setup is not within the scope of PCW services; f) petitioner can use adaptive equipment including dressing sticks, sock/stocking aids and long handled shoe horns to assist her in dressing of her lower extremities (putting on her pantyhose or tying her shoe laces); and g) petitioner has not established any significant deficits which interfere in her ability to complete her ADLs.
13. The petitioner failed to submit to DHA any response to OIG's reconsideration summary by the deadline of August 10, 2015 or even by the date of this decision.

DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only the following:**

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;

12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

(Emphasis added).

Wis. Admin. Code § DHS 107.112(1)(b).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the June 3, 2015 hearing, the petitioner and her mother (and PCW provider), [REDACTED] were rather disorganized and vague in their testimony, but alleged that petitioner's medical problems justified the approval of the requested 24.5 hours per week of PCW services. However, the petitioner was unable to present any reliable, persuasive testimony or evidence to establish that she required PCW services for any of the above 13 covered PCW activities. The petitioner did establish that she does have some lingering tingling in her hands and that at times she probably needs to use assistive devices in dressing especially of her lower extremities. See Findings of Fact #8 above. Furthermore, the Department correctly argued that the provision of PCW assistance cannot replace less expensive alternatives that can be used to maintain the member in his/her home . . . Assistance from a PCW with an activity is not medically necessary if the member can perform the activity safely with the use of an assistive device; therefore the PCW service is not a covered service per DHS 107.02(3) and DHS 107.03(5) and (9), Wis. Adm. Code.

In her July 22, 2015 written reconsideration, [REDACTED] indicated that the documentation submitted by petitioner did not support that [REDACTED] requires physical assistance to complete her ADLs. There are a variety of other interventions which should be tried first. Informal supports, such as [REDACTED]'s family, could also assist as needed. The medical necessity of PCW services, as defined in DHS 101.03, has not been met. The petitioner was unable to refute the convincing arguments in the Department's May 21, 2015 summary or the July 22, 2015 reconsideration summary and Exhibits. Furthermore, petitioner was unable to establish with any reliable evidence that she has any covered PCW needs that are not being met. Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly denied the petitioner's prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

CONCLUSIONS OF LAW

The Department correctly denied the petitioner's April, 2015 prior authorization (PA) request for personal care worker (PCW) services due to petitioner not establishing the medical necessity of PCW services.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

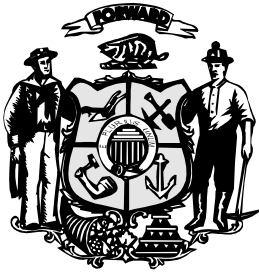
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of October, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 9, 2015.

Division of Health Care Access and Accountability